STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED October 26, 2010
v	No. 296455 Hillsdale Circuit Court
JAMES WESLEY MCKINNEY, Defendant-Appellee.	LC No. 09-332105-FC

Before: MURPHY, C.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

The prosecutor appeals, by leave granted, the trial court's order granting defendant's motion to suppress his admissions and confession. We affirm.

The prosecutor alleges that the trial court erred in granting suppression of defendant's admissions and confession to Officer Mark Hodshire during a 38-minute interview at a jail in DeKalb County, Illinois. We review de novo a trial court's ultimate decision on a motion to suppress evidence. *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001).

The United States and Michigan Constitutions guarantee the right against self-incrimination. US Const, Am V; Const 1963, art 1, § 17. As a corollary to the right against self-incrimination and the right to due process, the Fifth Amendment indirectly recognizes the right to counsel. *Miranda v Arizona*, 384 US 436, 466, 470; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Williams*, 244 Mich App 533, 538; 624 NW2d 575 (2001). To effectively invoke this right, a suspect's request must be unambiguous and unequivocal. *Berghuis v Thompkins*, ___ US ___; 130 S Ct 2250, 2259; 176 L Ed 2d 1098 (2010). Once invoked, however, a suspect may effectively waive this right and permit an interrogation to continue for a time as he wishes. *Davis v United States*, 512 US 452, 457; 114 S Ct 2350; 129 L Ed 2d 362 (1994). As *Davis* explained:

> If the suspect effectively waives his right to counsel after receiving the *Miranda* warnings, law enforcement officers are free to question him. But if a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation. [*Id*. (citations omitted).]

According to the videorecording of the interview between Officer Hodshire and defendant, the following exchange took place:

> *Hodshire:* So, you know why I'm here to talk to you, right?
>
> *Defendant:* Yeah, yeah.
>
> *Hodshire:* So, I'm here to get your side of the story of what happened and why. Okay. When we do investigations, we understand that things happen for certain reasons and some of those reasons we don't understand, in law enforcement, so that's why I wanted to talk with you today to get your side of the story of what happened.
>
> *Defendant:* Well if you don't mind, I just as soon wait until I get a public defendant or whatever.
>
> *Hodshire:* Well that's fine, but like I said . . .
>
> *Defendant:* We can talk over the other circumstances . . .
>
> *Hodshire:* And that's what I wanted to talk over, the circumstances behind it. Do you understand what I mean? We understand that things happen for reasons that aren't specifically clear to us or family members and I know your mom is concerned about what is going on as we stopped over in Lenawee County and talked to your mom and I guess you haven't seen her in a while?
>
> *Defendant:* No.

Shortly thereafter, defendant proceeded to incriminate himself in the shooting.

As an initial matter, we find defendant's statement, "I just as soon wait until I get a public defender," an unequivocal assertion of his right to counsel. Indeed, nothing about defendant's assertion was indecisive, equivocal, or ambiguous. See *Davis*, 512 US at 457; see also *Kyger v Carlton*, 146 F3d 374, 379 (CA 6, 1998) (defendant's statement "that he would 'just as soon have an attorney' was a request for counsel."). Further, that defendant was later receptive to questioning "may not be used to cast retrospective doubt on the clarity of the initial request itself." *Smith v Illinois*, 469 US 91, 92, 97, 100; 105 S Ct 490; 83 L Ed 2d 488 (1984). Consequently, with defendant having asserted his right to counsel unequivocally, it was incumbent upon the officer at this point to cease all questioning unless defendant subsequently was provided with counsel or until he "reinitiate[d] conversation." *Davis*, 512 US at 457.

In analyzing the discourse that followed defendant's assertion of his right to counsel, we are mindful that case law is clear that it is only "questioning" or "interrogation" of a suspect that must desist upon the suspect's assertion of his right to counsel. *Rhode Island v Innis*, 446 US 291, 299-300; 100 S Ct 1682; 64 L Ed 2d 297 (1980); *Davis*, 512 US at 460-461. Questions wholly unrelated to the interrogation such as those pertaining to record keeping, routine booking, or other pretrial matters do not constitute "interrogation" for purposes of *Miranda*. *Pennsylvania v Muniz*, 496 US 582, 601; 110 L Ed 2d 528; 110 S Ct 2638 (1990).

What makes this case somewhat unusual is the fact that Officer Hodshire and defendant spoke over each other during defendant's invocation of his right to counsel, and the immediate statement thereafter. Nevertheless, when viewed in context, we agree with the trial court that defendant's statements made after he invoked his right to counsel must be suppressed. First, the officer's response to defendant's assertion of his right to counsel was not a statement related to ministerial or administrative concerns. More specifically, after the officer told defendant, "Well that's fine"—a seeming innocuous response—he continued with the phrase, "but like I said . . . ." And although the parties dispute the meaning of this language, it is clear in context that the phrase, "but like I said," was not a reference to defendant's vital statistics or "biographical data necessary to complete booking or pretrial services" *Muniz*, 496 US at 601.

Second, the statement, "but like I said," can only refer to the officer's previous statement that his purpose was to "get [defendant's] side of the story," i.e., to continue the interrogation. Viewed in this manner, the officer's statement constituted continued interrogation because the police should have known that the statement was "reasonably likely to elicit an incriminating response from the suspect." *Rhode Island*, 446 US at 301. Moreover, because defendant's concession to "talk about the other circumstances" was made *only after* the officer offered to continue the exchange, we conclude that it was the officer who reinitiated questioning rather than defendant. Therefore, defendant's confession was obtained in violation of *Miranda*, and the trial court did not error in suppressing defendant's confession in its entirety.[1]

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray

[1] We note that there is nothing in the record to suggest that the officer used coercion or any other similar illegal tactic to obtain defendant's statements. The legal error was the officer's continuation of the conversation as if defendant never requested counsel.